

### REMARKS

This amendment is responsive to the office action dated April 20, 2007. Claims 51-111 are pending and stand rejected. By this amendment, Applicant has amended claim 51 to overcome the 35 U.S.C. Section 112. Reconsideration of the rejected claims 51-111 is respectfully requested in view of the amendments and the arguments urged below.

#### *Discussion of 112 Rejections*

First, in paragraph 3 of the office action, the Examiner rejected claims 51-79 under 35 U.S.C. Section 112, as failing to comply with the written description because “the system does not handle the consummation of a transaction.” The Examiner indicates that:

The specification describes qualifying callers for access to the system in order to make appointment, solicit proposals, respond to a proposal, or make a special offering (page 7, lines 8-14; page 32, line 30 – page 33, line 24), not to consummate a transaction. The general reference to consummating transactions” on page 6 of Applicant’s specification does not adequately support the claimed limitation of “qualifying the buyer for consummating the transaction.

Applicant respectfully submits that typically the entire purpose of the background section of a patent application is to describe the prior systems, their drawbacks and indicate the need that is fulfilled by the invention described in the summary and the detailed description that follow. The instant application points out a need and offers support on page 6, of the specification that clearly states that the system contemplates applications including **“merchandising”** including **“purchasing”** and **“selling.”** Further, at page 6, the specification, clearly states that the “the present system is configured to direct and exchange communication traffic, for example, in the form of offers and responses, between selective members of plural groups or sub-groups, such as vendors and buyers,” **for a number of applications including “consummating transactions.”** At the end of page 6, the specification indicates that the system is described in “accordance with **one exemplary embodiment related to wholesale merchandising.**” On page 8, the specification indicates that a video recording is stored allowing “buyers to view the item **prior to making a purchase.**” On page 34, the specification states that “if the call is simply **to report that a sale for a special offering has been consummated,**” the vendor may only need to enter

an identification number. Further at the end of page 34, the specification states that “video recordings on specific merchandise may be stored at the video file server 37 for **viewing by buyers and sales may be consummated** without any visual conferences between vendors and buyers.”

Applicant respectfully submits that the Examiner is summarily dismissing description in the specification that clearly support “consummating transactions” without adequate explanation and merely states that the support offered is inadequate. There is nothing in the specification that suggests that “qualifying” is merely for some applications and not for others. Nevertheless, claim 51 is amended to recite different language.

The Examiner is respectfully requested to withdraw the 112 rejections of claims 51-79 based on the amendment and arguments set forth here.

### ***35 U.S.C. § 103 Rejections***

In paragraph 5 of the office action, claims 51-79 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over Shavit et al. (U.S. Patent No. 5,727,164) in view of Kaye et al. (U.S. Patent No. 5,727,164), Foster (U.S. 4,897,867) and further in view of Smith (U.S. 5,450,123). Applicant notes that the Examiner now relies on four references to make this particular rejection. Likewise, in paragraph 6, claims 80-110 are rejected under 35 U.S.C. Section 103(a) as being unpatentable over the combination of Shavit, Kaye, Smith, and Dworkin (U.S. Patent No. 4,992,940). Yet again, the Examiner relies on four references to make this particular rejection. In paragraph 7 of the office action, the Examiner rejects claim 111 under 35 U.S.C. Section 103(a) as unpatentable over Dworkin in view of Smith, and further in view of Kaye (again three references).

Applicant respectfully requests the Examiner to consider the recent standard for evaluating obviousness. The Supreme Court set this standard for evaluating obviousness in its recent decision (*KSR International Co. v. Teleflex Inc. et al.* (550 U.S. 127 S. Ct. 1727 (2007))) to be “expansive and flexible” and “functional.” But, the standard is not controlling. Instead the various noted factors only “can” or “might” be indicative of obviousness based on the facts. The Supreme Court in *KSR* enunciated the following principles:

“[w]hen a work is available in one field of endeavor, design incentives and other market forces can prompt variations of it, either in the same field or a different one. If a person of ordinary skill can implement a predictable variation, Section 103 likely bars it patentability. For the same reason, if a technique has been used to improve one device, and a person of ordinary skill in the art would recognize that it would improve similar devices in the same way, using the technique is obvious unless its actual application is beyond his or her skill....[A] court must ask whether **the improvement is more than the predictable use of prior art elements according to their established functions.**

The Supreme Court in *KSR* also stated that:

a patent composed of several elements is not proved obvious merely by demonstrating that **each of its elements was independently known in the prior art.**

The Supreme Court in *KSR* has also stated that:

[o]ften, it will be necessary for a court **to look to interrelated teachings of multiple patents;** the effects of demands known to the design community or present in the market place.

Further, the Supreme Court stated in *KSR* that:

The Court [in *United States v. Adams*, 383 U.S. 39, 51-52 (1966)] relied upon the corollary principle **that when the prior art teaches away from combining certain known elements, discovery of a successful means of combining them is more likely to be nonobvious.**

Even with this recent standard, Applicant notes that the Examiner is combining at least three if not four references with teachings that are not interrelated but instead teach away from the combination suggested by the Examiner because they are simply independently known in the prior art. The Examiner is respectfully requested to reconsider her rejections based on the arguments presented here.

Respectfully submitted,

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